



STATE OF NEW JERSEY
Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

DIVISION OF WATER
AND WASTEWATER

IN THE MATTER OF THE JOINT PETITION)
OF LYONNAISE AMERICAN HOLDING,)
INC. AND UNITED WATER RESOURCES,)
INC. FOR APPROVAL OF A CHANGE IN)
OWNERSHIP AND CONTROL OF THE)
NEW JERSEY OPERATING UTILITIES)

DECISION AND ORDER

DOCKET NO. WM99110853

(SERVICE LIST ATTACHED)

BY THE BOARD:

On November 5, 1999, Petitioners, United Water Resources, Inc. ("UWR") and Lyonnaise American Holding, Inc. ("LAH") filed a joint petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, requesting approval of the transfer of a controlling interest in UWR to LAH.

United Water Resources, Inc., a holding company, is a corporation of the State of New Jersey with its principal offices located in Harrington Park. UWR is the second largest water distributor in the United States, serving approximately 7.5 million customers in 19 states. UWR is an investor-owned company, which owns 100% of the stock of United Water New Jersey ("UWNJ"), United Water Mid-Atlantic ("UWMA"), and United Waterworks, Inc. ("UW"), the former General Waterworks Corporation. UW owns the stock of both United Water Toms River ("UWTR") and United Water Lambertville ("UWL").

UWMA holds the stock of the following utilities operating in New Jersey: United Water Great Gorge, United Water Vernon Sewage, United Water Arlington Hills Water and Sewer, United Water Hampton, United Water West Milford Sewage, United Water Matchaponix, United Water Princeton Meadows, and United Water Vernon Hills. These UWMA utilities, together with UWNJ, UWTR and UWL are collectively referred to herein as the "New Jersey Operating Utilities." The New Jersey Operating Utilities serve approximately 235,000 customers in portions of nine New Jersey counties.

LAH is a holding company duly organized and existing under the laws of the State of Delaware. LAH's shares are wholly-owned by Suez Lyonnaise des Eaux ("SLDE"). SLDE is a corporation organized and existing under the laws of the Republic of France, with its shares publicly traded on the Paris Bourse. SLDE is a world leader in private infrastructure services (energy, water, waste services and communications), with operations in more than 120 countries.

LAH currently owns approximately 30.1% of the common shares of UWR, and approximately 98.1% of its convertible preference shares. As a result of the proposed acquisition, LAH will acquire all the shares of UWR for cash, and UWR will become a wholly-owned subsidiary of LAH, which, in turn, is a wholly-owned subsidiary of SLDE. The New Jersey Operating Utilities will continue to be wholly-owned subsidiaries of UWR and will continue to exist as New Jersey public utility corporations subject to regulation by the Board.

After proper notice, two public hearings were conducted with respect to the Joint Petition. On January 24, 2000, Commissioner Carmen J. Armenti presided over a hearing held in Toms River. No members of the public appeared to comment. A second hearing was held in Hackensack on February 8, 2000, with Commissioner Frederick F. Butler presiding. Several members of the public appeared and made comments on the record.

During the course of this proceeding, three motions to intervene were filed. By Order dated February 16, 2000, the Board granted the North Jersey District Water Supply Commission ("NJDWSC") intervenor status " ...limited to matters that relate to the impact of this proposed merger on current contracts and/or agreements between UWR/UWNJ and NJDWSC and common facilities either shared or utilized by UWR/UWNJ and NJDWSC within the confines of the standards and criteria set forth in N.J.S.A. 48:2-51.1." By Order dated May 16, 2000, the Hackensack Riverkeeper and the Sierra Club were both granted participant status by the Board.

After numerous settlement conferences and discussions, on June 23, 2000, Petitioners, the Staff of the Board, the Division of the Ratepayer Advocate ("Ratepayer Advocate"), NJDWSC,¹ the Hackensack Riverkeeper and the Sierra Club (collectively referred to as "the parties") entered into the attached Stipulation of Settlement, which fully disposes of all issues in this matter.

Proposed Agreement and Plan of Merger

UWR, SLDE, LAH and LAH Acquisition Company have entered into an Agreement and Plan of Merger, dated August 20, 1999 (the "Agreement"), which provides that UWR will be merged into LAH Acquisition Company, with UWR continuing as the surviving corporation and as a wholly-owned subsidiary of LAH. The transaction will thus result in the control of UWR by SLDE.

Under the terms of the Agreement, the total amount to be received per common share of UWR is \$35.48, which consists of \$35.00 per share in merger consideration paid at the time of closing, and a \$0.48 per share special dividend paid by UWR. As of the date of this Order, \$0.18 of the special dividend has been paid to shareholders by UWR. Any remaining portion of the special dividend will be paid at closing by UWR. The Agreement also states that holders of UWR series A preference stock, other than shares owned directly or indirectly by UWR, LAH or any of their respective wholly-owned subsidiaries, will receive \$29.17 per share.

¹ On June 16, 2000, by resolution, the NJDWSC authorized its Executive Director and/or General Counsel to execute the Stipulation of Settlement.

Petitioners filed their petition seeking approval of the merger under N.J.S.A. 48:2-51.1, which provides that:

No person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void.

From a regulatory perspective, the transaction is appropriately viewed as an acquisition of control under N.J.S.A. 48:2-51.1. Additionally, the petition was filed under N.J.S.A. 48:3-10, which the Board has fully considered in performing its analysis in this proceeding.

Under N.J.S.A. 48:2-51.1, the Board is required to:

...evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates.

The Board must determine whether this transaction can be accomplished without any adverse impact on the four areas specified in the statute, and that it is not contrary to the public interest.

The Board's primary tool to assure that the New Jersey Operating Utilities are properly protected lies in the Board's power to set rates and oversee the transactions of the New Jersey Operating Utilities. The Board's traditional regulatory powers will provide all the enforcement the Board will need to assure that the New Jersey Operating Utilities and their customers are adequately and properly protected and that the proposed transaction does not affect their operations or customers.

Stipulation

The parties agree that the N.J.S.A. 48:2-51.1 criteria are satisfied and that the proposed change in control will not adversely impact competition, rates, employees or the provision of safe and adequate utility service at just and reasonable rates. As more fully set forth in the attached Stipulation, the parties agree that:

1. Impact on Competition: The change in control will have no adverse impact on competition because the New Jersey Operating Utilities will continue to operate in their present franchise territories under the same market conditions, which currently exist, subject to the continuing jurisdiction of the Board.
2. Impact on Customer Rates: The rates and terms and conditions of service in effect on the date of closing will not change as a result

of the change in control. Moreover, UWR has agreed to freeze the rates of UWNJ for a period of two and one-half years, and to freeze the rates of the other New Jersey Operating Utilities for a period of one year, from the date of this Order. Further, the New Jersey Operating Utilities will continue to operate subject to the jurisdiction of the Board.

3. Impact on Employees: The change in control will not have an adverse impact on jobs in New Jersey or the employees of the New Jersey Operating Utilities. UWR has agreed that no layoffs or involuntary employee severance (except those for cause) will take place at the New Jersey Operating Utilities for one year following the date of this Order. Furthermore, no significant changes in employee staffing, compensation or benefits are contemplated at the present time or in the foreseeable future.
4. Impact on Service: The change in control will not affect the ability of the New Jersey Operating Utilities to provide safe, adequate and proper service. Nor will it in any way affect the Board's continuing jurisdiction over service.

The Board, having considered the record in this matter, HEREBY FINDS that:

1. The proposed change in control is to be made in accordance with law and, with the implementation of the provisions set out in the Stipulation as conditions to this Decision and Order, does not appear to be contrary to the public interest.
2. The proposed conditions set forth in the Stipulation entered into by the parties appear reasonable and appropriate and, in conjunction with existing statutes, provide the Board with sufficient means to properly regulate the operations of the New Jersey Operating Utilities.
3. Based upon the record in this proceeding and subject to the conditions set forth in this Order, the statutory criteria set forth in N.J.S.A. 48:2-51.1 are satisfied and the change in control can be accomplished without any adverse impact to competition, rates, employees or the provision of safe and adequate utility services at just and reasonable rates; and that the change in control will not affect the ability of the New Jersey Operating Utilities to continue to provide safe, adequate and proper service to their customers.
4. The proposed transaction is expected to: (i) benefit customers through more direct access to the water quality capabilities and research that SLDE provides in the many countries and markets in which it operates; and (ii) further increase the capability of UWR's utilities to continue to provide high quality water service to existing and new communities.

Accordingly, the Board HEREBY ADOPTS the Stipulation attached hereto as its own, incorporating by reference the terms and conditions as if fully set forth at length herein, subject to the following conditions:

- (a) UWR shall not allocate, push down, or assign any purchase price, special dividends, goodwill or any premium reflected in the purchase price of the UWR stock acquisition transaction to any of the New Jersey Operating Utilities, either directly or indirectly (i.e., allocated through its affiliates). Such items shall not be passed on to or funded by customers of the New Jersey Operating Utilities after the proposed transaction. No costs associated with this transaction (e.g., financial, legal, severance payments and investment services) or the purchase price of UWR's stock shall be passed on to, recovered from, or funded by customers of the New Jersey Operating Utilities. No acquisition adjustment amount, as defined in the Board-approved Uniform System of Accounts, shall be recovered from the customers of the New Jersey Operating Utilities.
- (b) Subject to the execution, where appropriate, of acceptable confidentiality agreements, the parties shall be provided reasonable access to the books and records of UWR or any of its regulated or non-regulated subsidiaries or affiliates for the purposes of reviewing the proper allocation of costs to the New Jersey Operating Utilities. UWR shall provide the Board with convenient and timely access to the books and records of LAH and SLDE where the Board directs, using appropriate procedures, that such access is necessary to ensure the proper exercise of the Board's regulatory jurisdiction. Failure to meet these requirements shall be viewed as a serious regulatory violation requiring appropriate sanctions and penalties. Furthermore, nothing in the Stipulation shall be construed so as to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et seq.
- (c) UWNJ/UWR/LAH/SLDE shall be bound by I/M/O Hackensack Water Company In Re Three Golf Course Transfer, Order, dated August 27, 1993, and I/M/O the Petition of Hackensack Water Company - Removal from Rate Base and Transfer of Excess Lands; and Consideration of Stipulation Regarding Golf Course Transfers and Utility Acquisition of Watershed Properties, Order of Approval, BRC Docket Nos. 8312-1096, 8506-586, 8712-1465 and WC90040266, dated October 12, 1993. In accepting the Stipulation with maps, the Board is not making a determination as to the applicability of the Watershed Protection and Moratorium Act, P.L. 1988, c. 163, to any particular parcel designated on the maps, which are attached to the Stipulation. At the time UWNJ requests an outside appraisal of UWNJ lands with the intention of divesting or developing such lands or takes other affirmative steps to divest, develop, or transfer an interest in such lands, UWNJ

shall provide notice² to the Board, the Riverkeeper, the Sierra Club, NJDWSC, and the municipality in which the subject property is located. In any event, UWNJ/UWR/LAH/SLDE is obligated to make appropriate application for any transfer of utility property and/or utility watershed property pursuant to applicable law.

- (d) UWNJ shall continue to make a good faith effort to discuss Best Management land use policies and practices with the municipalities in which it owns property, as well as with watershed protection groups. This discussion shall include educational programs and outreach efforts for municipal officials, business owners, the non-profit sector, schools and homeowners to promote watershed awareness and to minimize non-point pollution and stormwater runoff, so as to promote compliance with antidegradation standards and the achievement of no net increase of stormwater and pollutant loads into watershed areas. In addition, UWNJ shall continue to support road salt minimization projects, the use of pervious surfaces and the conservation and maintenance of buffer lands, including the use of native species for reforestation.
- (e) The New Jersey Operating Utilities shall use their best efforts to maintain all applicable water quality standards and to maintain or improve water service standards including, but not limited to, the following: water service related interruptions and employee response time thereto; and customer complaint and customer inquiry response time.
- (f) The Board takes notice of the agreements and commitments between the Petitioners and NJDWSC contained in paragraph (f) (and its subparts) of the Stipulation.
- (g) Upon closing, UWR shall inform the Board of the date on which the change in control shall have been consummated and within 180 days of closing shall provide the Board with an exhibit showing all transaction costs as well as the final details of the share prices and exchange ratios.
- (h) There shall be no change in the method by which the New Jersey Operating Utilities allocate costs to or from affiliates or subsidiaries without prior approval as required by law.
- (i) In accordance with and absent a change in N.J.S.A. 48:3-7.1 or in the applicable Board regulations, any management, advisory service, construction or engineering contract that in itself or in connection with another contract relating to the same work, project, transaction or service involves the expenditure of a sum

² For the purposes of providing notice, the address of the Riverkeeper is Hackensack Riverkeeper, c/o Bill Sheehan, 1000 River Road, T090C, Teaneck, NJ 07666; the address of the Sierra Club is Sierra Club, New Jersey Chapter, Attn: Executive Director, 57 Mountain Avenue, Princeton, NJ 08540; and the address of NJDWSC is Michael Restaino, Executive Director, NJDWSC, One F.A. Orechio Drive, Wanaque, NJ 07465.

exceeding twenty-five thousand dollars (\$25,000), made between the New Jersey Operating Utilities and any current or future affiliates shall be reported annually to the Board by the New Jersey Operating Utilities at the time of the filing of their annual report to the Board. Further, the New Jersey Operating Utilities shall continue to utilize a competitive procurement process, focused on least cost methodologies, with no preferential treatment given to any affiliated prospective vendor, including UWR, LAH and SLDE. The New Jersey Operating Utilities shall continue to comply with N.J.S.A. 48:3-7.1.

- (j) Subject to the execution, where appropriate, of acceptable confidentiality agreements, copies of the tax returns of UWR or any other entity consolidated with the New Jersey Operating Utilities for the purpose of Federal Income Taxes, shall be made available to the Board to the extent the Board determines that the information contained therein is necessary to resolve any regulatory or financial issues impacting the New Jersey Operating Utilities. This provision shall not impair the rights of any of the parties in any other proceeding.
- (k) The New Jersey Operating Utilities shall continue to maintain their books and records in accordance with the Board-approved Uniform System of Accounts or as otherwise prescribed by the Board. In addition, the financial statements of UWR and the New Jersey Operating Utilities shall be in U.S. dollars.
- (l) Neither the credit nor the assets of the New Jersey Operating Utilities shall be pledged to support any financing related to either UWR or its other affiliates, without the prior approval of the Board.
- (m) The corporate headquarters³ of the New Jersey Operating Utilities shall remain in New Jersey.

³ Currently, the New Jersey Operating Utilities maintain corporate headquarters in the following locations:

United Water New Jersey
200 Old Hook Road
Harrington Park, NJ 07640-1799

United Water Lambertville
26 Coryell Street
Lambertville, NJ 08530-0126

United Water Toms River
15 Adafre Avenue
Toms River, NJ 08754

United Water Mid-Atlantic
111 Howard Blvd., Suite 203
Mt. Arlington, NJ 07856-1315

- (n) No layoffs or involuntary employee severance (except those for cause) shall take place at the New Jersey Operating Utilities for one year following the date of this Order. A de minimis reduction in employment levels shall not constitute a violation of this provision. The New Jersey Operating Utilities shall provide reports on employee levels, income statements and balance sheets to the Board and the Division of the Ratepayer Advocate on a quarterly basis for a period of one year following the date of this Order.⁴ This provision governs the relations between the parties and does not confer any additional employee rights. Petitioners shall maintain the New Jersey Operating Utilities' non-contractual employee levels at, or near, those currently in existence. Any early retirement, voluntary employee reduction plan, or outsourcing program to be implemented within eighteen months of the date of this Order shall be reported to the Board prior to implementation of the program. The Board recognizes that SLDE has committed to continue to use local senior and middle management at the New Jersey Operating Utilities for a minimum of three years following the date of this Order.
- (o) Within 60 days of closing, the New Jersey Operating Utilities shall develop and submit for Board Staff and Ratepayer Advocate review a Customer Outreach and Education Program designed to inform customers of the transaction and assure them of the continued oversight of the Board, the New Jersey Department of Environmental Protection and the continued compliance with all New Jersey laws and regulations, and to inform them of the continuity of customer service and customer relations procedures of the New Jersey Operating Utilities. For a period of twelve months following the closing of the transaction, the New Jersey Operating Utilities shall file quarterly reports with the Board listing all customer complaints received during the prior quarter. The New Jersey Operating Utilities shall continue to comply with N.J.A.C. 14:3-6.6 and shall issue the reports in this paragraph using the Board Utility Inquiry Classification System ("BUICS").
- (p) The New Jersey Operating Utilities shall maintain capital structures, dividend policies, and use their best efforts to achieve financial target ratios consistent with at least the retention of the UWNJ's and UW's current debt ratings⁵ as reported by Moody's Investors Service and Standard & Poor's. Any lowering of these debt ratings, resulting in the debt instruments of UWR or the New Jersey Operating Utilities falling below investment grade shall be reported to the Board. UWR and the New Jersey Operating Utilities shall report to the Board any post-merger changes in dividend policy as they occur. The Board may exercise its

⁴ The quarterly employee level reports shall identify the number of management and non-management employees for each of the following categories: operations & maintenance, construction, customer relations, sales and other.

⁵ UWNJ's debt is currently rated A2 by Moody's and A by S&P. United Waterworks is rated A3 by Moody's and A by S&P.

authority to review in detail the capital structure, including the costs of debt and equity, of the New Jersey Operating Utilities.

- (q) The New Jersey Operating Utilities shall maintain a level of capital investment and best operating practices sufficient to ensure long-term safe, adequate and proper service.
- (r) For a minimum of three years following the date of this Order, a majority of the individuals appointed to serve on the UWR Board of Directors shall be United States nationals. To ensure appropriate local input, SLDE and LAH shall make familiarity with New Jersey interests and concerns an important consideration in appointing directors to serve on the Board of UWR.
- (s) Upon closing of the merger, UWR shall file with the Board a certified copy of its Certificate of Merger as recorded with the Secretary of State of the State of New Jersey.

- (t) The Board has an ongoing regulatory concern with cross-subsidization and non-arm's-length transactions. UWR shall file a report with the Board fully describing the corporate structure and corporate relationships of UWR in sufficient detail to allow the Board's Division of Audits to monitor compliance with all protections against improper affiliate relationships, such as cross-subsidization, allocations and non-arm's-length transactions. Within six months of the date of the closing of the merger, UWR shall file a report with the Board describing the corporate structure and corporate relationships of UWR as of that date, and updated thereafter following any major change in corporate structure or relationship. Furthermore, UWR shall immediately report to the Board any changes in the UWR Board of Directors with all particulars, including but not limited to, providing the resumes of the new directors.
- (u) The New Jersey Operating Utilities shall not disclose confidential customer information, including names, addresses, and phone numbers to any affiliate of SLDE without prior notice to the Board and without prior consent of the customer.
- (v) UWNJ shall not increase rates for a period of two and one-half (2 1/2) years from the date of this Order. The remaining New Jersey Operating Utilities shall not increase rates for a period of one (1) year from the date of this Order. The Board recognizes that unforeseen mandatory regulatory, legislative, accounting or tax changes beyond the control of the New Jersey Operating Utilities may take place during the term of the rate freeze noted above, and that the New Jersey Operating Utilities should neither materially benefit nor suffer financially in the event of such circumstances. If such unforeseen circumstances occur and result in material financial benefit or harm, rates may be adjusted pursuant to Board approval to reflect the changed circumstances.
- (w) The Board may exercise its authority to enforce the provisions of the Stipulation and this Order adopting the Stipulation.
- (x) The authority granted herein shall become null and void if the merger is not completed within one hundred and eighty (180) days of the date of this Order.
- (y) The Stipulation shall bind and inure to the benefit of the parties and their respective successors and assigns.
- (z) Prior to the sale, lease, mortgage or other disposition or encumbrance of any of its property, the New Jersey Operating Utilities shall obtain Board approval as required by N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6.

- (aa) The Stipulation shall not affect or in any way limit the exercise of the authority of the Board in any future petition or in any proceeding with respect to the rates, franchises, services, financing, capitalization, depreciation, accounting, maintenance, operations or any other matter affecting the New Jersey Operating Utilities.

DATED: 7/20/00

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

HERBERT H. TATE
PRESIDENT

(SIGNED)

CARMEN J. ARMENTI
COMMISSIONER

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(SIGNED)
EDWARD D. BESLOW
ACTING SECRETARY

Service List

**I/M/O the Joint Petition of Lyonnaise American Holding, Inc. and
United Water Resources, Inc. for Approval of a Change in Ownership and
Control of the New Jersey Operating Utilities
BPU Docket No. WM99110853**

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